

REMARKSI. Election/RestrictionA. Restriction Regarding Method Claims and Product-by-Process Claims

The Examiner issued a restriction requirement with respect to Group I which comprises method claims 1-18 and 20-21, and Group II which comprises product-by-process claims 19 and 22.

Applicant hereby elects Group I (claims 1-18 and 20-21) with traverse.

“A product defined by the process by which it can be made is still a product claim and can be restricted from the process if the examiner can demonstrate that the product as claimed can be made by another materially different process...If applicant convincingly traverses the requirement, the burden shifts to the examiner to document a viable alternative process or product, or withdraw the requirement.” MPEP 806.05(f) (emphasis added).

Claims 19 and 22 recite the identical process steps as recited in claims 1 and 20, respectively. Therefore, a reference (if any) to be cited by the Examiner to reject claims 1 and 20 can likewise be used to reject claims 19 and 22. That is, the method claims (1 & 20) and the product-by-process claims (19 & 22) in the present application include the same limitations and cannot be patentably distinct from each other.

The Examiner stated that the products as claimed in claims 19 and 22 could allegedly be made by “a lift-off process in combination with a patterned mask to form the patterned memory cells instead of the etching process.” However, both claims 19 and 22 specifically recite an “etching” step. Thus, the lift-off process, which by the Examiner’s definition is not an etching step, may not be applied.

Based on all of the foregoing, Applicant respectfully requests the Examiner to document a viable alternative process or withdraw the restriction requirement.

B. Restriction Regarding Species Claims

The Examiner further issued a restriction requirement with respect to species I which comprises claims 2-3, species II which comprises claim 4, species III which comprises claim 13, and species IV which comprises claim 12. The Examiner stated that if the Applicant elects the method claims in the Group restriction, Applicant may also elect one of species I or II and one of species III or IV.

Applicant hereby elects species I (claims 2-3) and species IV (claim 12) with traverse.

Page 10 of the Specification describes the subject matter of claim 4 as an obvious variant of the subject matters of claims 2 and 3.¹ Page 11 of the Specification describes the subject matter of claim 13 as an obvious variant of the subject matter of claim 12.¹ Therefore, species II is not patentably distinct from species I and species IV is not patentably distinct from species III.

Based on all of the foregoing, Applicant respectfully requests the Examiner to withdraw the species restriction requirement.

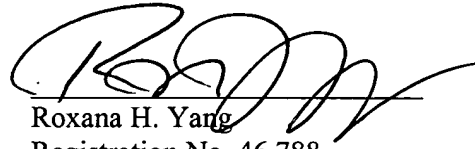
¹ The implementations described in the Specification are merely exemplary. Therefore, the scope of the claims should not be construed to be limited to those exemplary implementations.

II. Conclusion

In view of the foregoing, it is respectfully submitted that the application is now in condition for substantive examination. Should the Examiner believe that a telephone interview would help advance the prosecution of this case, the Examiner is requested to contact the undersigned attorney.

Respectfully submitted,

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